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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,449

03/06/2007

Franciscus Wilhelmus Cornelis den Ouden

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EXAMINER

LATHAM, SAEEDA MONEE

ART UNIT

PAPER NUMBER

1782

MAIL DATE

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08/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,449	<b>Applicant(s)</b> DEN OUDEN ET AL.	
	<b>Examiner</b> Saeeda Latham	<b>Art Unit</b> 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-34 is/are pending in the application.
- 4a) Of the above claim(s) 22-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-21 and 31-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/11/2007</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I claims 17-21 and 31-34 in the reply filed on 7/8/2010 is acknowledged. The traversal is on the ground(s) that focusing on what technical features are not shared between the claims, this rationale disregards the clearly overlapping special technical features that exist between them. To be sure, claim 22 (Group II) includes all of the features of claim 17 (Group I) by virtue of the fact that the method of flavoring a foodstuff or beverage of claim 22 does so by incorporating into the foodstuff or beverage an amount of the flavoring composition of claim 17.
2. This is not found persuasive because lack of unity of invention may be directly evident "a priori," that is, before considering the claims in relation to any prior art, or may only become apparent "a posteriori," that is, after taking the prior art into consideration. For example, independent claims to A + X, A + Y, X + Y can be said to lack unity a priori as there is no subject matter common to all claims. In the case of independent claims to A + X and A + Y, unity of invention is present a priori as A is common to both claims. See MPEP §1850 II.
3. Groups I - IV further lack unity of invention because even though the inventions of these groups require the technical feature a flavoring composition of claim 17, this technical feature is not a special technical feature as it does not make a contribution over the prior art in view of Golscher USPN 4163803. Golscher teaches reducing the undesirable bitterness of curcumin-containing turmeric by the addition of glycine, which

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may be in the form of glycine hydrochloride (column 1, lines, 6-8, 66- column 2, line 1).

Any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, if desired (column 2, lines 14-16). The composition is used to color or flavor a food or beverage (see Claim 1). Therefore, the technical feature lacks novelty or inventive step.

### ***Specification***

4. The disclosure is objected to because of the following informalities: "glycine exists in man form" should be corrected to read --many-- (see page 2, line 14).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 17 recites glycine hydrochloride or turmeric, or both in the flavoring composition. However, the claim concludes with a ratio of turmeric to glycine hydrochloride. How can there be either glycine hydrochloride or turmeric and a ratio of both? For examination purposes it is understood that glycine hydrochloride and turmeric are both present in the claimed flavoring composition.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**9. Claims 17-21, 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golscher USPN 4163803.**

10. Claims 17, 31 and 32 relates to a flavoring composition. Golscher teaches reducing the undesirable bitterness of curcumin-containing turmeric by the addition of glycine, which may be in the form of glycine hydrochloride (column 1, lines, 6-8, 66-column 2, line 1). Any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, if desired (column 2, lines 14-16). The composition is used to color or flavor a food or beverage (see Claim 1).

11. Golscher does not teach at least 5% or at least 10% by weight dry matter of glycine hydrochloride or a turmeric component. Since Golscher teaches the composition is used to color or flavor a food or beverage comprises turmeric and glycine to substantially reduce or eliminate bitter taste (see Claim 1) and any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, if desired (column 2, lines 14-16), it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amount at least 5% by weight dry

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matter of glycine hydrochloride or a turmeric component depending on the degree of reduction or elimination of bitter taste desired in the final food product.

12. Claims 18 and 33 relates to less than 2% turmeric and less than 1% turmeric, respectively. Since any suitable ratio of glycine to turmeric may be used such as an initial weight ratio of 0.1 to 5, if desired (column 2, lines 14-16), it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at such amount less than 2% turmeric by weight dry matter depending on the degree of reduction or elimination of bitter taste desired in the final food product.

13. Claims 19 and 34 relates to less than 20 wt% water, and less than 10wt% water, respectively. In the absence of the teaching, it is understood that the claim limitation is met.

14. Claim 20 relates to a free flowing powder. Goldscher teaches spray dried turmeric and purified powder turmeric (see Example I). Goldscher claimed method involved homogenously blending the glycine with turmeric (see Claim 8). It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized powder turmeric and made a blend of turmeric and glycine as Goldscher and further selected the glycine component in a conventional form such as powder that would effectively produce a homogenous powder that would be easily added to food products.

15. Claim 21 relates to at least 10% by weight of dry matter selected from yeast lysates, processed flavors and topnotes. Golscher teaches in one embodiment, the turmeric and glycine is added to a white frosting mix [considered a processed flavor]. It

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would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at amount of at least 10% by weight of dry matter of white frosting mix to achieve the desired amount of flavor and color in the final food product.

### ***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/S. L./

Examiner, Art Unit 1782

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1782